



# Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss.

COMMISSION ADJUDICATORY  
DOCKET NO. 698 and 699

## IN THE MATTERS OF STEVEN RAPOZA AND JAMES ROMANO

### DECISION AND ORDER

#### Procedural History

On January 27, 2004, the Petitioner issued Orders to Show Cause commencing *In the Matter of Steven Rapoza*, Docket No. 698, and *In the Matter of James Romano*, Docket No. 699, and alleging that Respondents Rapoza and Romano had each violated the conflict of interest law, G. L. c. 268A, §§ 3(b) and 23(b)(2), by accepting, receiving and securing \$100 each from Matthew St. Germain in connection with their execution as Town of Berkley Board of Health members of a certificate of compliance for a septic system that St. Germain had installed. Respondents filed Answers denying the alleged violations. The proceedings in these matters were consolidated pursuant to the Rules of Practice and Procedure, 930 CMR § 1.01(6)(g).

A hearing was held in the consolidated matters on May 11, 2004, before the Presiding Officer, Commissioner M. Tracey Maclin, pursuant to 930 CMR § 1.01(9). At the hearing, the Parties made opening and closing statements, and introduced evidence through witnesses and exhibits. St. Germain and both Respondents testified. The Parties subsequently filed briefs, pursuant to 930 CMR § 1.01(9)(k).

The Commission (Commissioner Elizabeth J. Dolan abstaining) reviewed the Orders to Show Cause (as amended), the Answers, the hearing transcript, the hearing exhibits, the Parties' stipulations and the Parties' briefs, and, pursuant to 930 CMR § 1.01(9)(m), on June 15, 2004, met in executive session, deliberated concerning these matters and voted to make this Decision and Order.

#### Law

Section 3(b) of G. L. c. 268A, in relevant part, prohibits a municipal employee from, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly seeking, accepting or receiving anything of substantial value for himself for or because of any official act or act within his official responsibility performed or to be performed by him.

Section 23(b)(2) of G. L. c. 268A, in relevant part, prohibits a municipal employee from, knowingly or with reason to know, using or attempting to use his official position to secure for himself or others unwarranted privileges or exemptions which are of substantial value and which are not properly available to similarly situated individuals.

Anything with a value of \$50 or more is of substantial value for the purposes of §§ 3 and 23. See *LIAM v. State Ethics Commission*, 431 Mass. 1002, 1003 (2000); see also *Commonwealth v. Famigletti*, 4 Mass. App. Ct. 584, 587 (1976).

In adjudicatory proceedings before the Commission, the burden of proof is on Petitioner, which must prove its case by a preponderance of the evidence. 930 CMR § 1.01(9)(m)(2). The weight to be attached to any evidence in the record rests within the sound discretion of the Commission. 930 CMR § 1.01(9)(l)(3).

### Decision

Based upon its weighing of the evidence in the record in these matters, the Commission concludes that Petitioner did not prove its cases against Respondents by a preponderance of the evidence. More specifically, Petitioner did not prove by a preponderance of the evidence that Respondents each accepted, received or secured \$100 from St. Germain in violation of G. L. c. 268A, §§ 3(b) and 23(b)(2), as alleged in the Orders to Show Cause.

### Order

Because Petitioner did not meet its burden of proving its cases by the preponderance of the evidence, the Commission hereby ORDERS that *In the Matter of Steven Rapoza*, Docket No. 698, and *In the Matter of James Romano*, Docket No. 699, are DISMISSED.

**DATE AUTHORIZED: June 15, 2004**

**DATE ISSUED: June 21, 2004**